

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

In Re:

*Enforcement of Interconnection Agreement between BellSouth
Telecommunications, Inc. and XO Tennessee, Inc.*

*Enforcement of Interconnection Agreement between BellSouth
Telecommunications, Inc. and ITC^DeltaCom.*

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TN REGULATORY AUTHORITY
DOCKET ROOM

Docket No. 02-01203

MOTION TO SUSPEND PROCEDURAL SCHEDULE

XO Tennessee, Inc. ("XO") and ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") jointly file this Motion to Suspend the Procedural Schedule in the above-captioned proceeding pending the issuance of a written order by the Federal Communications Commission ("FCC") in Docket No. CC-01-338 ("The Triennial Review").

As the Hearing Officer is aware, this consolidated proceeding arose from complaints filed by BellSouth Telecommunications, Inc. ("BellSouth") against ITC^DeltaCom and XO. In the complaint, BellSouth asserts that it has properly exercised its right to demand an audit of extended enhanced loops ("EELs") utilized by the two carriers. The purpose of the audit request is to determine whether those EELs are being used to carry a "significant amount" of local telephone traffic. The FCC has defined a "significant amount" in several ways, giving the CLECs three different "safe harbors" *i.e.*, ways of demonstrating that the EEL is, in fact, carrying significant local traffic. BellSouth's audits will presumably determine whether the EELs used by XO and DeltaCom fall within one of the safe harbors. The parties have each issued extensive discovery requests, due to be answered on March 4, 2003, based on the

assumption that these safe harbor provisions as well as the FCC's other orders addressing these issues are still in effect.

On February 20, 2003, however, the FCC announced that it had changed the rules on the use of EELs and the safe harbor provisions. In a press release (copy attached), the FCC summarized these changes:

Service Eligibility – Service eligibility criteria apply to all requests for newly-provisioned high-capacity EELs and for all requests to convert existing circuits of combinations of high-capacity special access channel termination and transport services. These criteria include architectural safeguards to prevent gaming.

Certification – Each carrier must certify in writing to the incumbent LEC that it satisfies the qualifying service eligibility criteria for each high-capacity EEL circuit.

Auditing – Incumbent LECs may obtain and pay for an independent auditor to audit compliance with the qualifying service eligibility criteria for the high-capacity EELs. The incumbent LEC may not initiate more than one audit annually.

Unfortunately, the FCC has not yet released its written order explaining in detail how and to what extent the safe harbor provisions are being replaced by “architectural safeguards,” what safeguards CLECs will be required to demonstrate and to what extent, if any, these changes will apply retroactively. The written order will also presumably clarify whether BellSouth is required to demonstrate specific “concerns” in order to justify an audit or whether the carrier can demand an audit without any stated justification. Such clarification of existing rules would presumably apply retroactively and, thus, directly affect the position of the parties in this proceeding.

All of these issues are central to the dispute in this litigation. It makes little sense to continue with discovery and testimony until the FCC order has been issued and these issues clarified. Whatever effort is expended now will almost certainly have to be done over after the order is released. Large portions of the current discovery requests will likely no longer be

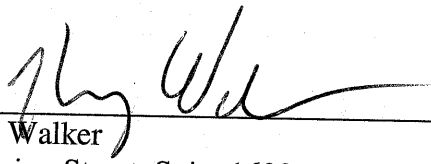
relevant, and it is almost certain that the parties will need another round of discovery to address the FCC's revised safe harbor rules and audit criteria. BellSouth's complaints may even be moot. Rather than continuing efforts that are likely to be wasted, it makes more sense to put the current schedule on hold until after the order is issued and then allow the parties to re-write their discovery questions in light of the FCC's decision.

For these reasons, the parties ask that the current procedural schedule be suspended pending release of the FCC's written order the Triennial Review.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: _____


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 26 day of February, 2003.

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ATTACHMENT TO TRIENNIAL REVIEW PRESS RELEASE

Order on Remand

- Local Circuit Switching – The Commission finds that switching - a key UNE-P element - for business customers served by high-capacity loops such as DS-1 will no longer be unbundled based on a presumptive finding of no impairment. Under this framework, states will have 90 days to rebut the national finding. For mass market customers, the Commission sets out specific criteria that states shall apply to determine, on a granular basis, whether economic and operational impairment exists in a particular market. State Commissions must complete such proceedings (including the approval of an incumbent LEC batch hot cut process) within 9 months. Upon a state finding of impairment, the Commission sets forth a 3 year period for carriers to transition off of UNE-P.
- Packet Switching – Incumbent LECs are not required to unbundle packet switching, including routers and DSLAMs, as a stand-alone network element. The order eliminates the current limited requirement for unbundling of packet switching.
- Signaling Networks – Incumbent LECs are only required to offer unbundled access to their signaling network when a carrier is purchasing unbundled switching. The signaling network element, when available, includes, but is not limited to, signaling links and signaling transfer points.
- Call-Related Databases – When a requesting carrier purchases unbundled access to the incumbent LEC's switching, the incumbent LEC must also offer unbundled access to their call-related databases. When a carrier utilizes its own switches, with the exception of 911 and E911 databases, incumbent LECs are not required to offer unbundled access to call-related databases, including, but not limited to, the Line Information database (LIDB), Toll Free Calling database, Number Portability database, Calling Name (CNAM) database, Operator Services/Directory Assistance databases, and the Advanced Intelligent Network (AIN) database.
- OSS Functions – Incumbent LECs must offer unbundled access to their operations support systems for qualifying services. OSS consists of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. The OSS element also includes access to all loop qualification information contained in any of the incumbent LEC's databases or other records.
- Loops
 - Mass Market Loops
 - * Copper Loops – Incumbent LECs must continue to provide unbundled access to copper loops and copper subloops. Incumbent LECs may not retire any copper loops or subloops without first receiving approval from the relevant state commission.

- * Line Sharing – The high frequency portion of the loop (HFPL) is not an unbundled network element. Although the Order finds general impairment in providing broadband services without access to local loops, access to the entire stand-alone copper loop is sufficient to overcome impairment. During a three-year period, competitive LECs must transition their existing customer base served via the HFPL to new arrangements. New customers may be acquired only during the first year of this transition. In addition, during each year of the transition, the price for the high-frequency portion of the loop will increase incrementally towards the cost of a loop in the relevant market.
- * Hybrid Loops – There are no unbundling requirements for the packet-switching features, functions, and capabilities of incumbent LEC loops. Thus, incumbent LECs will *not* have to provide unbundled access to a transmission path over hybrid loops utilizing the packet-switching capabilities of their DLC systems in remote terminals. Incumbent LECs must provide, however, unbundled access to a voice-grade equivalent channel and high capacity loops utilizing TDM technology, such as DS1s and DS3s.
- * Fiber-to-the-Home (FTTH) Loops – There is no unbundling requirement for new build/greenfield FTTH loops for both broadband and narrowband services. There is no unbundling requirement for overbuild/brownfield FTTH loops for broadband services. Incumbent LECs must continue to provide access to a transmission path suitable for providing narrowband service if the copper loop is retired.
- Enterprise Market Loops
 - * The Commission makes a national finding of no impairment for OCn capacity loops.
 - * The Commission makes a national finding of impairment for DS1, DS3, and dark fiber loops, except where triggers are met as applied in state proceedings. States can remove DS1, DS3, and dark fiber loops based on a customer location-specific analysis applying a wholesale competitive alternatives trigger.
 - * Dark fiber and DS3 loops also each are subject to a customer location-specific review by the states to identify where loop facilities have been self-deployed.
- Subloops
 - * See the copper loops summary above. In addition, incumbent LECs must offer unbundled access to subloops necessary for access to wiring at or near a multiunit customer premises, including the Inside Wire Subloop, regardless of the capacity level or type of loop the requesting carrier will provision to its customer.

- Network Interface Devices (NID) – Incumbent LECs must offer unbundled access to the NID, which is defined as any means of interconnecting the incumbent LEC's loop distribution plant to the wiring at the customer premises.
- Dedicated Interoffice Transmission Facilities – The Commission redefines dedicated transport to include only those transmission facilities connecting incumbent LEC switches or wire centers.
 - * The Commission finds that requesting carriers are not impaired without access to unbundled OCn level transport.
 - * The Commission finds that requesting carriers are impaired without access to dark fiber, DS3, and DS1 transport, except where wholesale facilities triggers are met as applied in state proceedings using route-specific review.
 - * Dark fiber and DS3 transport also each are subject to a granular route-specific review by the states to identify where transport facilities have been self-deployed.
- Shared Transport – Incumbent LECs are required to provide shared transport to the extent that they are required to provide unbundled local circuit switching
- Combinations of Network Elements – Competitive LECs may order new combinations of UNEs, including the loop-transport combination (enhanced extended link, or EEL), to the extent that the requested network element is unbundled.
- Commingling – Competitive LECs are permitted to commingle UNEs and UNE combinations with other wholesale services, such as tariffed interstate special access services.
- Service Eligibility – Service eligibility criteria apply to all requests for newly-provisioned high-capacity EELs and for all requests to convert existing circuits of combinations of high-capacity special access channel termination and transport services. These criteria include architectural safeguards to prevent gaming.
 - Certification – Each carrier must certify in writing to the incumbent LEC that it satisfies the qualifying service eligibility criteria for each high-capacity EEL circuit.
 - Auditing – Incumbent LECs may obtain and pay for an independent auditor to audit compliance with the qualifying service eligibility criteria for high-capacity EELs. The incumbent LEC may not initiate more than one audit annually.
- Modification of Existing Network/"No Facilities" Issues – Incumbent LECs are required to make routine network modifications to UNEs used by requesting carriers where the requested facility has already been constructed. These routine modifications include deploying multiplexers to existing loop facilities and undertaking the other activities that incumbent LECs make for their own retail customers. The Commission also requires incumbent LECs to condition loops for the provision of xDSL services. The Commission does not require incumbent LECs to trench new cable or otherwise to construct

transmission facilities so that requesting carriers can access them as UNEs at cost-based rates, but it clarifies that the incumbent LEC's unbundling obligation includes all transmission facilities deployed in its network.

- Section 271 Issues – The requirements of section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling, under checklist items 4-6 and 10, regardless of any unbundling analysis under section 251. Where a checklist item is no longer subject to section 251 unbundling, section 252(d)(1) does not operate as the pricing standard. Rather, the pricing of such items is governed by the “just and reasonable” standard established under sections 201 and 202 of the Act.
- Clarification of TELRIC Rules – The order clarifies two key components of its TELRIC pricing rules to ensure that UNE prices send appropriate economic signals to incumbent LECs and competitive LECs. First, the order clarifies that the risk-adjusted cost of capital used in calculating UNE prices should reflect the risks associated with a competitive market. The order also reiterates the Commission's finding from the *Local Competition Order* that the cost of capital may be different for different UNEs. Second, the Order declines to mandate the use of any particular set of asset lives for depreciation, but clarifies that the use of an accelerated depreciation mechanism may present a more accurate method of calculating economic depreciation.
- Fresh Look – The Commission will retain its prior determination that it will not permit competitive LECs to avoid any liability under contractual early termination clauses in the event that it converts a UNE to a special access circuit.
- Transition Period – The Commission will not intervene in the contract modification process to establish a specific transition period for each of the rules established in this Order. Instead, as contemplated in the Act, individual carriers will have the opportunity to negotiate specific terms and conditions necessary to translate the Commission's rules into the commercial environment, and to resolve disputes over any new contract language arising from differing interpretations of the Commission's rules.
- Periodic Review of National Unbundling Rules – The Commission will evaluate these rules consistent with the biennial review mechanism established in section 11 of the Act. These reviews, however, will not be performed *de novo* but according to the standards of the biennial review process.

Further Notice of Proposed Rulemaking

- The Commission opens a further notice of proposed rulemaking to seek comment on whether to modify the Commission's interpretation of section 252(i) – the Commission's so-called pick-and-choose rule. The Commission tentatively concludes that a modified approach would better serve the goals embodied in section 252(i), and sections 251-252 generally, by promoting more meaningful commercial negotiations between incumbent LECs and competitive LECs.